IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2002

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

Crl.R.C.No.1483 of 2001

Navasakthi .. Petitioner

versus

1. State by
The Inspector of Police
Aanaimalai Police Station
Coimbatore.

2. Naga Manickam
3. Murugan
4. Appavoo
5. Chinappan
6. Palanisamy Gounder
7. Subbaraya Gounder
8. Murugesan
9. Nithianantham .. Respondents

Revision against the judgment dated 25.4.2000 made in C.C.No.317 of 1999 on the file of the learned Judicial

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! For petitioner : Mr.K.Kalyanasundaram

^ For respondent-1 : Mr.E.Raja
Addl. Public Prosecutor

For respondents-2 to 9 : Mr.C.Prakasam

: ORDER

On 20.4.1999, the accused persons numbering about eight, came in a jeep to the house of the victim woman Navasakthi,armed with aruval, thadi and other dangerous weapons and caused damage to the household articles, trees, attempted to attack Navasakthi, her husband and her daughter and committed an act of outraging modesty. On the complaint given by the said Navasakthi, the case

was registered against them.

2. After investigation, the charge sheet was filed against the accused persons on C.C.No.317 of 1999 before the Judicial Magistrate No.1, Pollachi for the offences under Sections 147, 148, 427, 354 and 506 Part II, I.P.C.

3. Since the witnesses were not available, the Sub Inspector of Police, who filed a charge sheet alone,was examined as P.W.1 and the accused were questioned and ultimately they were acquitted on the ground that there were no witnesses to adduce any material evidence relating to occurrence and offences as against the accused persons. This acquittal order has been challenged by the first informant, the victim before this Court, in this revision.

4. I have heard the counsel for the petitioner, counsel for the respondents-2 to 9 and the learned Additional Public Prosecutor appearing for the State.

5. It is noticed from the impugned order that the witnesses were not produced before the trial Court after framing of the charges for some hearings and that the Sub Inspector of Police was alone examined and the case was closed.

6. The Assistant Public Prosecutor, who was entrusted with the task of conducting this case, merely filed an endorsement before this Court made by the Village Administrative Officer that witnesses were not available in the village, and informed the Court that the other witnesses were dispensed with.

7. The learned Judicial Magistrate also entertained the said endorsement and acquitted the accused, just expressing his helplessness and observing about the negligent attitude of the police in not procuring the witnesses for trial, though they were seriously affected due to the offences committed by the respondent/accused. As a matter of fact, all the witnesses, the victims, are alive and available in the village.

8. The above fact would reveal that all the functionaries, viz., the learned Judicial Magistrate, Assistant Public Prosecutor, who was in charge of the case, and the Sub Inspector of Police who conducted the investigation, have not performed their duties properly, and this is quite unfortunate.

9. Those who are entrusted with the task of enforcement of law and administration of justice, should see that justice should not fail on mere technical grounds,because the laymen, who are the victims, would be so anxious about the proper and

effective enforcement of law and administration of justice at the hands of the Court and other machineries.

10. The public at large expect the process of investigation and the administration of justice to be efficiently, fairly and speedily carried on without giving any room for the culprits to escape through the loop-holes of the investigation or due to the glaring misbehaviour of the investigating agency.

11. If cases of serious nature end in acquittal on mere technical grounds or on the mere lapse on the part of the investigating officers or on the part of the prosecuting agency in the conduct of the case or on the part of the Court itself in not applying its judicial mind in its great responsibility administering justice, the citizens would lose their confidence and become desparate, and consequently, will not show any interest in co-operating with the law enforcing authorities in their task of enforcement of law.

12. The Courts holding the scales of justice should always remember that there may be a scale made of gold to weigh justice, but that there is no scale made of any material to weigh the injustice done to the society.

13. Time and again, this Court emphasised the duties of police, prosecutor and the Court, while dealing with criminal case, as laid down in STATE V. VEERAPPAN AND OTHERS reported in 1980 L.W. (Crl.) 187 , MARAPPA GOUNDER V. VENKATACHALAM AND ANOTHER reported in 1983 L.W. (Crl.) 1, KASI CHETTIYAR, P.L. V. KARUPPASAMY & ANOTHER reported in 1994-2-L.W. (Crl.) 759 and in KUMAR M. J. V. SAHADEVAN & 3 OTHERS reported in 1997-1-L.W. (Crl.) 24 (2).

14. In the case on hand, I find that the Assistant Public Prosecutor had completely derelicted in his duty, which he was expected to perform, by rendering all assistance to the Court in conducting the proceedings. It is noticed in this case that several summons have been issued directing the police to serve them on the witnesses. Despite that, the Sub Inspector of Police did not take proper action by procuring the witnesses.

15. On the other hand, in order to show to the Court as

if he took some steps to serve the summons, the Sub Inspector of Police, managed to get a certificate from the Village Administrative Officer, stating that those witnesses are not available in the village.

16. In view of the affidavits filed by the witnesses before this Court stating that they are residing in the said village, it is made clear that the Village Administrative Officer concerned has given a false certificate, and on the strength of the said false certificate, the Sub Inspector of Police intimated to the Court through the Assistant Public Prosecutor that the witnesses were not available.

17. The Sub Inspector of Police concerned, thus, not only did not take steps to serve the summons on the witnesses, but also gave a false information to the Court that the witnesses were n[ot available, merely by procuring a false certificate. This conduct on the part of the Sub Inspector is to be highly condemned, as he has failed to assist the Court in serving the summons on the witnesses in obedience to the directions of the Court.

18. To make the matters worse, the Assistant Public Prosecutor also, as an obedient servant of the Sub Inspector of Police, made an endorsement in the docket sheet that all the other witnesses were dispensed with, in view of the certificate issued by the Village Administrative Officer. This shows that the said Assistant Public Prosecutor is not conversant with the law on the issue.

19. In the decision in STATE V. VEERAPPAN AND OTHERS reported in 198 0 L.W. (Crl.) 187, a Full Bench of this Court has elaborately considered as to what is the course to be adopted by the learned Judicial Magistrate in the matter of ensuring the production of witnesses on the side of the prosecution.

20. The Full Bench of this Court has specifically held in the said decision that the Judicial Magistrate should take coercive steps for ensuring the production of the important witnesses. The learned Judicial Magistrate, in the present case, would simply say that several reminders have been sent for service of summons, but the police were not diligent.

21. There is nothing on record to show n STATE V. VEERAPPAN AND OTHERS reported in 1980 L.W. (Crl.) 187 and MARAPPA GOUNDER V. VENKATACHALAM AND ANOTHER reported in 1983

L.W. (Crl.) 1, and summon the witnesses, if need be, through coercive steps, and give opportunity to both and decide in accordance with law. Since the case relates to the year 1999, the trial Court shall give priority to this case and finish the same as expeditiously as possible.

23. Before parting with this case, it would be worthwhile to refer to the conduct of the Village Administrative Officer, the Sub Inspector concerned and the Assistant Public Prosecutor, who was in charge of this case, which, in my view, is highly condemnable. Therefore, they have to be suitably dealt with, through departmental action.

24. Hence, the Collector of the District concerned shall, on receipt of a copy of this order, take suitable action against the Village Administrative Officer, who had issued the false certificate and the Assistant Public Prosecutor of the case, and also the Sub Inspector of Police, through proper channel. In the result, this revision is allowed. Crl.M.P.No. 541 of 2001 is closed.

Index:Yes / No 25.01.2002 Office to note:
1. Send the copy to the trial Court.
2. Mark a copy to the District Collector.
3.Send a copy to the Public Prosecutor of the High Court, Madras, to enable to send the copy of the order to the District Collector and Home Department, to take further steps in the matter.
Pre-delivery order in Crl.R.C.No.1483 of 2001